



Developing Topics in Asylum Law: Particular Social Groups,
Family-Based Claims, and Other Emerging Issues
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Definition of a Particular Social Group

A PSG is defined as:

1. Persecution that is directed:
 - toward an individual
 - who is a member of a group of persons
 - all of whom share a common, immutable characteristic.

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Definition of a Particular Social Group

2. The shared characteristic might be:
 - an innate one such as sex, color, or kinship ties, or
 - in some circumstances it might be shared past experience such as former military leadership or land ownership.

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Definition of a Particular Social Group

3. The shared characteristic must be:
 - one that the members of the group either cannot change, or
 - should not be required to change because it is fundamental to their individual identities or consciences.
 - *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).

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Definition of a Particular Social Group

Aliens must show proposed PSG:

- involves immutable characteristic;
 - is defined with particularity; and
 - is socially distinct within the society in question.
- *Matter of M-E-V-G-*, 24 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 24 I&N Dec. 208 (BIA 2014).

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Definition of a Particular Social Group

In addition, a proposed PSG cannot be circular.

- The PSG cannot be defined by the harm, mistreatment, or persecution suffered by members of the PSG.
- *Matter of A-M-E & J-G-U*, 24 I. & N. Dec. 69, 74 (BIA 2007), *aff'd sub nom. Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir.2007).
 - *Rreshpja v. Gonzales*, 420 F.3d 551, 555-56 (6th Cir.2005).

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Who Defines the PSG?

- Aliens must define the PSG.
- Exact delineation of proposed PSG(s) must be clearly indicated on the record before IJ.
 - *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018).

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Who Defines the PSG?

- BIA will generally not address proposed PSGs not raised before IJ.
 - *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018).

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Who Defines the PSG?

- See also *Mayorga-Sosa v. Sessions*, 888 F.3d 379 (8th Cir. 2018).
- IJ not required to seek clarification of proposed PSG.

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Who Defines the PSG?

- Alien must define PSG according to Board precedent.
- What if alien is pro se?

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When is PSG Defined?

- When must the proposed PSG(s) be defined?
 - At Master Calendar when fear of return expressed?
 - When I-589 filed?
 - In pre-hearing brief?

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When is PSG Defined?

- When must the proposed PSG(s) be defined?
 - At Merits hearing?
 - Beginning of hearing?
 - During hearing?
 - Developed through testimony?
 - At close of hearing?

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How must PSG Defined?

- How must the proposed PSG(s) be defined?
 - In writing?
 - Orally?

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Examples of PSGs

- Circuit courts have addressed broad PSGs:
 - Guatemalan women
 - *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010).
 - Somali women
 - *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007).
 - Iranian women
 - *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1997).

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Examples of PSGs

- “gender is an immutable trait that is generally recognizable”
- *Matter of A-T-*, 24 I&N Dec. 296, 304 (BIA 2007), *vacated and remanded*, *Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008).

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Examples of PSGs

- Circuit courts have addressed narrow PSGs:
 - Nuclear family
 - *Velasquez v. Sessions*, 866 F.3d 188 (4th Cir. 2017).
 - Immediate family
 - *Morales v. Sessions*, 860 F.3d 812 (5th Cir. 2017).
 - Family
 - *C.J.L.G. v. Sessions*, 880 F.3d 1122 (9th Cir. 1997).

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Circuit Court & PSG-Family-Based Claims

- Family is immutable.
 - *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015); *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011).
 - *Ayele V. Holder*, 564 F.3d 862 (7th Cir. 2009).
 - Second & Third Circuits addressed this in unpublished decisions.

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Circuit Court & PSG-Family-Based Claims

- Association with family alone insufficient.
 - *C.J.L.G. v. Sessions*, 880 F.3d 1122 (9th Cir. 2018).
 - *Matter of L-E-A-*, 27 I&N Dec. 40, 45 (BIA 2017).
 - See generally, *Giraldo-Pabon v. Lynch*, 840 F.3d 21 (1st Cir. 2016).

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Circuit Court & PSG-Family-Based Claims

- Must be targeted because of family relationship.
 - *Ruiz-Escobar v. Lynch*, 881 F.3d 252 (1st Cir. 2018).
 - *Salgado-Sosa v. Sessions*, 882 F.3d 451 (4th Cir. 2018).
 - *Ramirez-Mejia v. Lynch*, 794 F.3d 485 (5th Cir. 2015).
 - *Amezola-Garcia v. Lynch*, 846 F.3d 135 (6th Cir. 2016).
 - *Cambara-Cambara v. Lynch*, 837 F.3d 822 (8th Cir. 2016).

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Emerging Issues in Adjudicating Asylum Claims

- Motions to suppress mixed with asylum claims
- “Imputed” Membership in a PSG
- Social Media Accounts and Asylum Seekers
- Others?

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Conclusion

The End

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